

Tuesday, April 26, 2011

The Board met at its offices at 450 N Street, Sacramento, at 1:20 p.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

David Jones and Jamie Jones, 525089

2005, \$486.00 Assessment

For Appellant:

David Jones, Taxpayer

Mark Shaltes, Representative

For Franchise Tax Board:

Kathryn Frank, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown error in the Franchise Tax Board's (respondent) determination that appellants are only entitled to a claimed theft loss deduction in the amount of \$6,078.00 under Internal Revenue Code (IRC) section 165.

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 4.1](#))

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Glen Eugene Pearson III and Stephen Terrance Pearson, 406221 (KH)

4-1-00 to 6-30-05, \$74,218.15 Tax, \$35.10 Failure to Timely File Return Penalty, \$4,719.15

Finality Penalties, \$9,192.56 Negligence Penalties, \$2,233.88 Amnesty Interest Penalty

For Petitioners:

Jesse W. McClellan, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable as a successor for the unpaid liabilities incurred by Jewelry by Michael Alan, Inc., and whether adjustments are warranted.

Whether the contract between petitioner and Mr. Morales was fraudulent and is therefore void.

Whether the Department issued the Notice of Successor Liability to the appropriate party.

Whether relief of the penalties included in the successor liability is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Hall's Window Center, Inc., 486260 (KH)

4-1-04 to 3-31-07, \$28,817.71 Tax

For Petitioner:

Robert Grandinetti, Representative

Andrew Grandinetti, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is entitled to relief from the tax and interest at issue based on its alleged reliance upon written advice received during the prior audits of its predecessor.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jarnail Singh, 469091 (KH)

10-21-04 to 9-30-07, \$15,369.52 Tax

For Petitioner:

Jarnail Singh, Taxpayer

Abe Golomb, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.
Whether adjustments are warranted to the disallowed claimed exempt sales of food.

Abe Golomb, Representative, stated for the record that the taxpayer concedes to the remaining tax at issue and requests a payment plan.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and that staff offer the taxpayer a payment plan of at least two years, and that any payment plan beyond two years is to be at the discretion of the Department.

PUBLIC HEARINGS

Property Taxes – State Assessee's Presentation on the Valuation of State-Assessed Properties

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made remarks regarding the State Assessee's Presentations on the Valuation of State-Assessed Properties. Mr. Thompson thanked the City of Huntington Beach for providing additional information, which staff is currently investigating ([Exhibit 4.2](#)).

Speakers:

Tina Krause, Real Property Agent, City of Huntington Beach

Andrew Van Horn, Managing Director, Van Horn Consulting, representing City of Huntington Beach

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CHIEF COUNSEL MATTERS**RULEMAKING****Petition to Amend Property Tax Rules 462.060 (Life Estates and Estates for Years), 462.100 (Leases), 462.160 (Trusts), 462.180 (Legal Entities), 462.260 (Date of Change in Ownership)**

Carole Ruwart, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding a petition to amend Property Tax Rule 462.060, *Change in Ownership–Life Estates and Estates for Years*; Property Tax Rule 462.100, *Change in Ownership–Leases*; Property Tax Rule 462.160, *Change in Ownership–Trusts*; Property Tax Rule 462.180, *Change in Ownership–Legal Entities*; and, Property Tax Rule 462.260, *Date of Change in Ownership*; to prohibit a change in ownership in certain circumstances as a violation of due process ([Exhibit 4.3](#)).

Ms. Ruwart stated for the record that the petitioner withdrew amends with the exception of Property Tax Rule 462.260, *Date of Change in Ownership*.

Speakers: Douglas Wacker, Lake County Assessor/ Recorder, and President of the California County Assessors' Association
Barbara Edginton, Assessment Manager, California County Assessors' Association

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board denied the petition as recommended by staff.

OTHER CHIEF COUNSEL MATTERS

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the request for authorization to file an amicus curiae brief in the matter of *Assessor for County of Santa Barbara (Appellant) v. Assessment Appeals Board No. 1 (Respondent)*, Santa Barbara County Superior Court Case No. 01244457, Court of Appeal 2nd District Case No. B229656 (Real Parties in Interest/Respondents: Rancho Goleta Lakeside Mobileers, Inc., and Silver Sands Village, Inc.), regarding the valuation of resident-owned mobilehome park interests under Revenue and Taxation Code section 62.1 and the Board's guidelines ([Exhibit 4.4](#)).

Speakers: Marie A. LaSala, Deputy County Counsel, Santa Barbara County
Richard Holly, Chief Deputy Assessor, Santa Barbara County Assessor's Office

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board authorized staff to file an amicus curiae brief.

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Deborah Cooke, Tax Counsel, Administration Division, Legal Department, discussed the development of guidelines for outreach partnerships; and, establishing a practice of posting Statements of Economic Interest (FPPC Form 700s) and travel claim schedules for Board Members, their staff, and executive staff members on the Board's website.

Action: Ms. Mandel moved to direct staff to draft proposed outreach partnership guidelines for the Board's consideration at its July 2011 meeting. Mr. Horton offered an amendment to direct staff to examine best practices within the State of California's Legislature and Executive Branch that share commonalities with the BOE; examine the *Board of Equalization Administrative Manual* (BEAM) and other existing policies and provide Members with copies; and, include a budget and cost factor for discussion at its July presentation. The amended motion was seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

Ms. Yee directed staff to provide a more expansive analysis of the laws, policies and guidelines for the purpose of determining whether each limitation and prohibition makes sense.

With respect to establishing a practice of posting Statements of Economic Interest (FPPC Form 700s) and travel claim schedules for Board Members, their staff, and executive staff members on the Board's website, the Board directed staff to draft a proposed policy for the Board's consideration taking into consideration the Members' concerns. The proposal should include an analysis as to the scope of employees that should be covered by the policy.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD TUESDAY, APRIL 26, 2011

David Jones and Jamie Jones, 525089

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD TUESDAY, APRIL 26, 2011

Glen Eugene Pearson III and Stephen Terrance Pearson, 406221 (KH)

Final Action: Mr. Runner moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Hall's Window Center, Inc., 486260 (KH)

Final Action: Mr. Runner moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

Matthew Howard Rokes, 401819 (KH)

1-1-03 to 12-31-05, \$19,364.39 Tax, \$3,015.19 Negligence Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted for exempt sales in interstate commerce.
Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Juan Manuel Gallardo, 466120 (BH)

7-1-04 to 6-30-07, \$42,842.44 Tax, \$5,912.59 Negligence Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of unreported sales.
Whether petitioner was negligent.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board recessed at 5:02 p.m.

The foregoing minutes are adopted by the Board on July 27, 2011.

Wednesday, April 27, 2011

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS**Cypress Semiconductor Procurement, LLC, 445411 (GH)**

10-1-04 to 9-30-07, \$1,400,414.99 Tax

For Petitioner:

Dave Gaul, Representative

Reed Schreiter, Representative

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner made a taxable sale of the equipment at issue.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Black Hawk Tobacco, Inc., 445011 (EH)

10-11-05 to 12-31-07, \$801,463.74 Tax, \$80,146.41 Negligence Penalty

Frederick Allen McAllister, 417165, 445001, 469656 (EH)

4-1-04 to 12-31-04, \$60,677.39 Tax, \$6,067.75 Negligence Penalty

1-1-05 to 12-31-05, \$124,043.11 Tax, \$12,404.32 Negligence Penalty

10-11-05 to 12-31-07, \$801,463.74 Tax, \$80,146.41 Negligence Penalty

For Petitioners:

Michael A. Robinson, Attorney

Tim Hennessy, Attorney

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioners were required to collect and remit use tax with respect to sales of Native American tobacco products on Indian reservation land.

Whether petitioners were negligent.

Whether Mr. McAllister is liable as a predecessor for the amounts assessed against Black Hawk for the period October 11, 2005, through December 31, 2007.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Edmond A. Heinbockel and Lydia Rose Heinbockel, 354404 (UT)

9-24-04, \$20,120.00 Tax

For Petitioner:

David Harlow, Representative

Edmond A. Heinbockel, Taxpayer

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners' use of the subject aircraft qualified for the common carrier exemption.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Media Management Service, Inc., 294859, 391611 (EA)

6-1-00 to 3-31-03, \$59,617.64 Tax, \$5,961.76 Finality Penalty, \$5,888.84 Amnesty Double Finality Penalty, \$7,674.33 Amnesty interest Penalty

1-1-01 to 12-31-01, \$27,063.00 Claim for Refund

For Petitioner:

James H. Elmore, Representative

Clyde W. Sleight, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the base columns and head sections purchased by taxpayer to furnish and install in construction contracts were materials purchased for consumption or fixtures purchased for resale.

Whether relief of the finality penalty is warranted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the matter be submitted for decision.

The Board recessed at 1:02 p.m. and reconvened at 1:53 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Living Spaces Furniture, LLC, 425660 (AA)

1-1-04 to 12-31-06, \$484,806.12 Tax

For Petitioner:

Joseph A. Vinatieri, Attorney

Grover Geiselman, Witness

TexAnn Simmons, Witness

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's sales of Guardian Protection Plan Kits are sales of tangible personal property, the gross receipts of which are subject to sales tax.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Thomas Eugene Brosi, 451594*; and, *Finbars Italian Kitchen SB, Inc., 435792, 519738*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Enrique Parra Pimentel, 447458, 457732 (KH)

7-1-04 to 5-12-07, \$10,698.91 Tax, \$13,546.76 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

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Thomas Eugene Brosi, 451594 (KH)
4-1-00 to 9-30-03, \$66,578.26 Tax, \$11,129.28 Penalty
Action: The Board took no action.

Krishna Kumari, 472802 (CH)
7-1-04 to 6-30-07, \$28,980.42 Tax
Action: Redetermine as recommended by the Appeals Division.

Cash For Cars, Inc., 380605, 414417 (GH)
10-1-00 to 5-1-05, \$56,283.09 Tax
Action: Redetermine as recommended by the Appeals Division.

Nassir Nassr Abdallah, 557456 (ET)
October 8, 2010, \$454.51 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Evon Halaka, 557492 (ET)
October 17, 2010, \$297.76 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Ashot Oganessian, 556257 (ET)
August 25, 2010, \$295.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Serve Well Market, Inc., 556237 (ET)
August 5, 2010, \$65.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Wafaa Gabr Booth, 557528 (ET)
October 5, 2010, \$111.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Finbars Italian Kitchen SB, Inc., 435792, 519738 (EA)
12-1-04 to 9-30-06, \$4,800.90 Tax
Action: The Board took no action.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Nathan Anderson, 533432.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

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Louie Elias, 534426

2006, \$557.00 Tax, \$139.25 Late Filing Penalty, \$139.25 Notice and Demand Penalty, \$113.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Jefferson Jones, 519281

2006, \$214.00 Tax

Action: Sustain the modified action of the Franchise Tax Board.

Sharon Scott, 522446

2005, \$13,756.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David Grochowski, 533565

2005, \$1,467.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Glenn T. Anderson, 510810

2002, \$269.85 Claim for Refund

2003, \$2,470.40 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Nathan Anderson, 515674

2007, \$238.00 Tax, \$59.50 Late Filing Penalty, \$291.50 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Nathan Anderson, 533432

2006, \$749.00 Tax, \$187.25 Late Filing Penalty, \$187.25 Notice and Demand Penalty

Action: The Board took no action.

Lisa A. Arnold, 505666

2005, \$18,264.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Janis Durelle Bartlett and Jay Jason Bartlett, 496458

2006, \$396.57 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael Beeman, 505719

2005, \$1,163.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Tammy Boule, 492973

2005, \$614.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Erich Boykins, 484701

2007, \$1,250.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

David Brouse and Regina M. Brouse, 533306

2004, \$1,023.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Thomas L. Burrelsman, 496506

2005, \$142.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Obdulio V. Castaneda, 531563

2006, \$468.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Enrique Castillo and Maria C. Castillo, 507987

2008, \$516.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert Cramer, 482900

1972 through 1999, \$33,000.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Steven Cranny, 464451

2004, \$366.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

David N. DeSisto, 492499

2005, \$655.00 Assessment, \$163.75 Late Filing Penalty, \$163.75 Demand Penalty, \$119.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Cleo Dorsey, 527698

2002, \$7,030.63 Claim for Refund

2003, \$8,328.00 Claim for Refund

2004, \$7,852.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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James Frankel, 525558

2005, \$3,508.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Deborah A. Goodrich, 468874

2006, \$704.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Lester H. Harman, Jr., 473080

2004, \$800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kathleen M. Holbrook and Mark V. Holbrook, 523023

2003, \$870.00 Assessment

2004, \$941.00 Assessment

2005, \$1,460.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Amber Robertson Irby and James R. Irby, 483842

2005, \$905.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Estate of Nokhey Lal (Dec'd) and Sanyukta Lal, 479640

1999, \$4,699.00 Tax, \$1,174.75 Late Filing Penalty, \$1,113.87 Estimated Post Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Anthony Leonti and Marilyn Leonti, 510160

2005, \$1,022.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Isidro M. Leyva and Araceli M. Leyva, 535475

2006, \$1,059.00 Assessment

Action: Modify the action with concession of the Franchise Tax Board.

Ronald Machorro, 513675

2006, \$358.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Joseph F. McCullough, 521609

2006, \$3,259.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jesus Padilla, 485852

2004, \$33,915.00 Tax, \$8,478.75 Late Filing Penalty

Action: Modify the action of the Franchise Tax Board.

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Kenneth Piana, 497531

2006, \$1,189.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Michael Racine, 509433

2005, \$158.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Mario Rodarte, 467210

2006, \$1,284.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Thomas M. Santos, 531269

2006, \$449.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Hyuk Son and Hee W. Han, 534987

2006, \$2,589.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kenny Terry, 493055

2006, \$1,443.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Arthur T. Thompson, 443770

2004, \$898.00 Tax

Action: Modify the action with concession by the Franchise Tax Board.

Mario T. Valdovinos, 493311

2005, \$435.00 Claim for Refund

2006, \$465.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Voyant International Corporation, 468705

2001, \$1.00 or more Interest

Action: Sustain the action of the Franchise Tax Board.

Justin D. Walker, 514360

2006, \$1,152.00 Tax

Action: Modify the action of the Franchise Tax Board.

Robert R. Woolery and Joann L. Woolery, 439832

2004, \$416.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Joel Young, 486473

2005, \$959.45 Assessment

Action: Modify the action with concession of the Franchise Tax Board.

Teresa Benjamin, 487973

2000, \$2,203.00 Claim for Refund

Action: Deny petition for rehearing.

Donald R. Lee and Debra J. Lee, 513965

2005, \$1,077.00 Tax

Action: Deny the petition for rehearing.

Dexter Luther, 486933

2005, \$1,748.00

Action: Deny the petition for rehearing.

Elizabeth Magness, 508940

2007, \$4,204.00 Tax, \$1,051.00 Late Filing Penalty, \$1,294.75 Demand Penalty, \$5,000.00

Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Eric Mattson, 510013

2007, \$1,580.00 Tax, \$395.00 Late Filing Penalty, \$1,827.00 Demand Penalty, \$750.00 Frivolous

Appeal Penalty

Action: Deny the petition for rehearing.

Norman Schaffer, 497533

2005, \$207.00 Assessment

Action: Deny the petition for rehearing.

Steven T. Waltner and Sarah V. Waltner, 468742

2004, \$2,122.18 Claim for Refund, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Metron Technology Distribution Corp., 507424 (GH)

4-1-05 to 12-31-07, \$748,984.41

Action: Approve the redetermination as recommended by staff.

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Phillip A. Rosenband, 476900 (OH)

1-1-00 to 7-9-03, \$473,939.17

Action: Approve the redetermination as recommended by staff.

Parameter Generation and Control, 532770 (OH)

1-1-02 to 12-31-09, \$125,212.63

Action: Approve the redetermination as recommended by staff.

SEL Retail Operations, 489128 (OH)

7-1-02 to 6-30-05, \$1,802,833.60

Action: Approve the redetermination as recommended by staff.

Tech Health, Inc., 470245 (OH)

10-1-03 to 9-30-06, \$285,378.16

Action: Approve the redetermination as recommended by staff.

Journey Education Marketing, Inc., 534167 (OH)

1-1-07 to 6-30-09, \$115,328.76

Action: Approve the redetermination as recommended by staff.

Janus International Corp., 524483 (OH)

4-1-04 to 3-31-07, \$254,704.67

Action: Approve the redetermination as recommended by staff.

Coach, Inc., 559491

8-1-10 to 8-31-10, \$141,542.16

Action: Approve the relief of penalty as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Toyota Motor Credit Corporation, 505668*; the Board made the following orders:

Dale Allen Smith, 561451 (GH)

4-1-99 to 11-2-03, \$460,012.87

Action: Approve the credit and cancellation as recommended by staff.

Cardinal Health 303, Inc., 506464 (FH)

10-1-04 to 6-30-07, \$1,207,796.75

Action: Approve the credit and cancellation as recommended by staff.

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Final Film, 445086 (AS)

1-1-06 to 9-30-09, \$106,777.05

Action: Approve the refund as recommended by staff.

Toyota Motor Credit Corporation, 505668 (AS)

4-1-08 to 12-31-09, \$18,664,725.40

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Chevron U.S.A., Inc., 557632 (BH)

1-1-03 to 12-31-06, \$2,880,210.09

Action: Approve the refund as recommended by staff.

Regents of the University of California, 556675 (BH)

10-1-02 to 12-31-05, \$1,341,392.24

Action: Approve the refund as recommended by staff.

Union Bank of California, 560087 (BH)

10-1-01 to 9-30-04, \$210,772.40

Action: Approve the refund as recommended by staff.

International Medical Systems, Inc., 470370 (EH)

7-1-08 to 9-30-08, \$126,449.34

Action: Approve the refund as recommended by staff.

Saint Jude Hospital, 547820 (EA)

7-1-07 to 6-30-10, \$307,563.13

Action: Approve the refund as recommended by staff.

SCI California Funeral Services, Inc., 549186 (OH)

4-1-10 to 6-30-10, \$147,483.00

Action: Approve the refund as recommended by staff.

Dave Dennison Co., Inc., 549182 (FH)

4-1-09 to 6-30-10, \$144,769.61

Action: Approve the refund as recommended by staff.

Safe Credit Union, 484610 (KH)

10-1-07 to 12-31-09, \$235,297.62

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 558400 (OH)

12-4-09 to 11-5-10, \$651,897.80

Action: Approve the refund as recommended by staff.

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P W Gillibrand Co., Inc., 558859 (AR)

10-1-07 to 9-30-10, \$121,627.56

Action: Approve the refund as recommended by staff.

Morgan Stanley Capital Group, Inc., 510868 (OH)

4-1-09 to 9-30-10, \$451,794.74

Action: Approve the refund as recommended by staff.

Metropolitan Finance, LLC, 549187 (AP)

7-1-10 to 9-30-10, \$102,800.00

Action: Approve the refund as recommended by staff.

Callaway Golf Sales Company, 549128 (FH)

4-1-08 to 6-30-08, \$216,883.52

Action: Approve the refund as recommended by staff.

Arcadia Financial Ltd., 546344 (OH)

4-1-10 to 6-30-10, \$178,918.00

Action: Approve the refund as recommended by staff.

Compton AG Services, LLC, 506800 (OH)

4-1-07 to 3-31-09, \$312,379.13

Action: Approve the refund as recommended by staff.

Asbury Sacramento Imports, LLC, 557824 (KH)

4-1-06 to 6-30-09, \$360,981.22

Action: Approve the refund as recommended by staff.

Tropicana Manufacturing Co., Inc., 486061 (OH)

10-1-07 to 9-30-08, \$860,187.96

Action: Approve the refund as recommended by staff.

SEM Materials LP, 522986 (OH)

1-1-07 to 6-30-07, \$114,975.89

Action: Approve the refund as recommended by staff.

Altaone Federal Credit Union, 549130 (AR)

4-1-10 to 9-30-10, \$107,075.00

Action: Approve the refund as recommended by staff.

Imagine Print Solutions, Inc., 506604 (OH)

1-1-05 to 9-30-08, \$153,677.07

Action: Approve the refund as recommended by staff.

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Fastcredit Financial, Inc., 556971 (AS)

7-1-05 to 6-30-09, \$121,325.00

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Special Taxes Matters, Redeterminations, Relief of Penalties, and Denial of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Equilon Enterprises, LLC, 284348 (MT)

7-1-98 to 12-31-01, \$7,204,329.28

Action: Approve the redetermination as recommended by staff.

Equilon Enterprises, LLC, 327675 (MT)

1-1-02 to 12-31-04, \$4,217,995.28

Action: Approve the redetermination as recommended by staff.

J.C. Newman Cigar Co., 382761 (ET)

4-1-98 to 12-31-03, \$362,639.31

Action: Approve the redetermination as recommended by staff.

Tesoro Refining, Marketing and Supply Co., 556532 (MT)

1-1-08 to 12-31-08, \$117,285.61

Action: Approve the relief of penalty as recommended by staff.

Equilon Enterprises, LLC, 443025 (MT)

10-1-04 to 12-31-04, \$664,332.00

Action: Approve the denial of claim for refund as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105, the Board made the following order:

Conocophillips Company, 506349 (EF)

1-1-06 to 12-31-08, \$335,121.00

Action: Approve the refund as recommended by staff.

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LEGAL APPEALS MATTER, ADJUDICATORY

Kashmir Singh Khinda, 549135 (ET)

April 30, 2010, \$6,659.90 Approximate Value

Considered by the Board: January 26, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Outrigger Marina I., LLC, 472893

2006, \$100.00 Late Filing Penalty

Considered by the Board: December 14, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Charles E. Grays II, 464314

1995, \$6,519.25 Claim for Refund

1996, \$917.97 Claim for Refund

1997, \$2,748.15 Claim for Refund

1998, \$1,124.82 Claim for Refund

1999, \$3,132.46 Claim for Refund

2000, \$220.00 Claim for Refund

2001, \$2,808.46 Claim for Refund

2002, \$3,113.36 Claim for Refund

Considered by the Board: October 19, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Valerie Nelson, 489125

2003, \$1,618.00 Tax, \$312.80 Accuracy-Related Penalty

Considered by the Board: October 19, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board (FTB) as conceded by the FTB on appeal to delete the accuracy-related penalty, otherwise sustaining the action of the FTB.

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Rheem Manufacturing Company, 485872

2003, \$225,850.00 Assessment

Considered by the Board: May 25, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing.

PROPERTY TAX MATTERS

Audits

Cybernet Communications, Inc. (7516)

2007, \$167,000.00 Escaped Assessment, \$16,700.00 Penalties, \$55,110.00 In-lieu Interest

2008, \$109,000.00 Escaped Assessment, \$10,900.00 Penalties, \$26,160.00 In-lieu Interest

2009, \$44,000.00 Escaped Assessment, \$4,400.00 Penalties, \$6,600.00 In-lieu Interest

2010, \$28,000.00 Escaped Assessment, \$2,800.00 Penalties, \$1,680.00 In-lieu Interest

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

Advanced Tel, Inc. (7952)

2007, \$2,000.00 Excessive Assessment

2008, \$24,800.00 Escaped Assessment, \$2,480.00 Penalties, \$5,952.00 In-lieu Interest

2009, \$17,500.00 Escaped Assessment, \$1,750.00 Penalties, \$2,625.00 In-lieu Interest

2010, \$10,300.00 Escaped Assessment, \$1,030.00 Penalties, \$618.00 In-lieu Interest

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

Intermetro Communications, Inc., (8044)

2007, \$450,000.00 Escaped Assessment, \$45,000.00 Penalties, \$148,500.00 In-lieu Interest

2008, \$490,000.00 Escaped Assessment, \$49,000.00 Penalties, \$117,600.00 In-lieu Interest

2009, \$30,000.00 Escaped Assessment, \$3,000.00 Penalties, \$4,500.00 In-lieu Interest

2010, \$310,000.00 Excessive Assessment

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

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Charter Fiberlink CA-CCO, LLC (8061)

2007, \$19,200,000.00 Escaped Assessment, \$1,920,000.00 Penalties, \$6,336,000.00 In-lieu Interest

2008, \$4,100,000.00 Escaped Assessment, \$410,000.00 Penalties, \$984,000.00 In-lieu Interest

2009, \$6,100,000.00 Escaped Assessment, \$610,000.00 Penalties, \$915,000.00 In-lieu Interest

2010, \$400,000.00 Escaped Assessment, \$40,000.00 Penalties, \$24,000.00 In-lieu Interest

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

Unitary Escaped Assessments**Gill Ranch Storage, LLC (121)**

2010, \$26,300,000.00 Escaped Assessment, \$0.00 Penalties, \$986,250.00 In-lieu Interest

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment, plus in-lieu interest, as recommended by staff.

IPC Network Services, Inc. (8029)

2010, \$71,600.00 Escaped Assessment, \$0.00 Penalties, \$2,685.00 In-lieu Interest

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment, plus in-lieu interest, as recommended by staff.

Unitary Land Escaped Assessments**Pacific Bell Telephone Co. (279)**

2007-2010, \$1,956,500.00 Unitary Value

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessments as recommended by staff.

T-Mobile West Corporation (2748)

2007-2010, \$5,253,305.00 Unitary Value

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessments as recommended by staff.

Wednesday, April 27, 2011

Board Roll Change

2010 Board Roll of State-Assessed Property Roll

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2010 Board Roll of State-Assessed Property as recommended by staff ([Exhibit 4.5](#)).

Exhibits to these minutes are incorporated by reference.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Allstate Cellular San Diego, Inc.*; *California Host, Inc.*; *R&R Yacht Sales, Inc.*; *Jamshid Malakouti*; and, *Vicki Crabtree*; as recommended by staff.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 4.6](#)).

Bonnie L Cannon, Tax Technician II, Culver City District Office
Sharon Gregory, Administrative Assistant II, Sales and Use Tax Department,
Headquarters

Action: Approve the Board Meeting Minutes of December 14-16, 2010, January 26-27, 2011, February 22-23, 2011, and March 22-24, 2011.

. Action: Set the rate of prepayment of sales tax on diesel fuel distributions for the period July 1, 2011 through March 31, 2012 at \$0.25 per gallon, as recommended by staff ([Exhibit 4.7](#)).

Action: Approve proposed revisions to Audit Manual Chapters 2 and 5, as recommended by staff ([Exhibit 4.8](#)).

Action: Set the tobacco products tax rate at 31.73 percent for Fiscal Year 2011-12, as recommended by staff ([Exhibit 4.9](#)).

Wednesday, April 27, 2011

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Business Taxes Committee**

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 4.10](#)).

Committee vote was as follows:

Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Committee approved and authorized for publication the proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*.

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Kristine Cazadd, Interim Executive Director, provided a report on the time extensions to Butte, Orange, Trinity and Ventura Counties to complete and submit 2011/12 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 4.11](#)).

Ms. Cazadd introduced David Gau, Deputy Director, Property and Special Taxes Division, who reported the progress of the CROS Project to replace BOE's two current tax legacy technology systems ([Exhibit 4.12](#)). Mr. Gau reported the Department of Personnel Administration's approval of the CROS Project Manager CEA Level III, and thanked Margarita Haro, Manager, Technology Services Division, for agreeing to serve as the fulltime dedicated Interim CROS Project Director.

Ms. Yee directed staff to provide the separate timeline, as described by Mr. Gau, to include the contingency of not receiving delegation of procurement authority, at the May Board Meeting.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided a facilities update that included updates on nationwide office recommendations—a presentation on BOE's nationwide facilities, the Headquarters remediation project, and the site search to relocate the San Diego and San Marcos offices. Ms. Houser introduced Andres Estrada, San Diego District Administrator, Sales and Use Tax Department, who provided a presentation on the office of the future.

Speaker: Randall Cheek, Union Representative, SEIU Local 1000

Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2010/11 and proposed 2011/12 Budgets and pending Union Agreements.

Wednesday, April 27, 2011

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
APRIL 27, 2011**

Cypress Semiconductor Procurement, LLC, 445411 (GH)

Final Action: Mr. Runner moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Black Hawk Tobacco, Inc., 445011 (EH)

Frederick Allen McAllister, 417165, 445001, 469656 (EH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Edmond A. Heinbockel and Lydia Rose Heinbockel, 354404 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Media Management Service, Inc., 294859, 391611 (EA)

Final Action: Mr. Runner moved that the administrative protest and claim be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that no adjustment be made in the administrative protest and that the claim for refund be denied as recommended by the Appeals Division.

Living Spaces Furniture, LLC, 425660 (AA)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be granted as to the warranty, and that the remainder be returned to the Department to further refine the determination of the taxable measure related to fabrication, which is to be considered by the Board no later than its July meeting.

ANNOUNCEMENT OF CLOSED SESSION

Diane Olson, Chief, Board Proceedings Division, announced that pending litigation item *City of Fillmore v. State Board of Equalization* (Cities of Industry and Livermore, Interveners) Court of Appeal, Second Appellate District Case No. B219483 (Gov. Code § 11126(e)) was added to the closed session calendar having met the criteria of Government Code section 11126.3(d).

Wednesday, April 27, 2011

The Board recessed at 4:14 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 5:00 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board adjourned at 5:01 p.m.

The foregoing minutes are adopted by the Board on July 27, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Peelle Technologies, Inc.*, 390328, 451512; *Wahid Ahmad Taki*, 547438; Offers-in-Compromise Recommendation in the matter of *Shinma Kusala*.